

IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON  
TUESDAY, 11<sup>TH</sup> JUNE, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT  
COURT JUDGE

CASE NO: D6/221/2022

THE REPUBLIC

VRS

RICHIE SUSU AWU

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ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

**ANDREW K. VORTIA, ESQ. FOR THE ACCUSED PERSON PRESENT**

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RULING ON A SUBMISSION OF NO CASE TO ANSWER AS FILED BY THE  
DEFENCE COUNSEL ON BEHALF OF THE ACCUSED PERSON

The Accused person has been charged with three (3) counts of Defrauding by False Pretences contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29). He pleaded Not Guilty to all the charges after same were read and explained to him

FACTS OF THE CASE

The 1<sup>st</sup> complainant, Jackson Mensah is a Momo Agent, 2<sup>nd</sup> complainant, Ernest Opoku is a farmer and the 3<sup>rd</sup> complainant, Kwarteng Cyprian is unemployed. During the month of October, 2021, the 1<sup>st</sup> complainant discussed with his brother-in-law called Kenneth Biney that he wanted to travel outside Ghana. The said Kennedy Biney linked up with one Baffour who also introduced Accused person to complainants as someone who could assist them secure traveling documents to travel to Germany. Through phone conversation, the complainants moved from Sefwi to Accra and met the Accused person at Achimota, Accra. At the meeting, the Accused showed complainants some visas he claimed he had secured for other people. The complainants became convinced and the Accused person charged fees of GH¢24,000.00, GH¢24,000.00 and GH¢38,400.00 respectively with the assurance that he would be able to secure them the German Visas within three (3) weeks. The Accused person after taking the money failed to honour his promise and kept assuring the complainants that everything would be done. On the 25<sup>th</sup> February, 2022, the Accused person took the complainants to the Kotoka International Airport that they were to depart to Germany. At the Airport, the Accused person moved around and later came and told the complainants that they were late for the flight so he had to book them on another date. The complainants became suspicious of the conduct of Accused person and reported the matter to the police. On the 4<sup>th</sup> March, 2022, the Accused person was arrested.

At the trial, the prosecution called five (5) witnesses to testify in support of its case. The testimony of PW1, PW2, PW3 and PW4 confirm the facts as presented by the prosecution.

PW5 (Detective Inspector Imoro Abata) investigated the case. PW5 relied on his Witness Statement and tendered in evidence, the Cautioned and Charge Statements of the Accused person without any objection.

After the close of the case of the prosecution, the defence counsel filed a written submission of no case to answer on grounds that the prosecution had not been able to lead evidence to establish a prima facie case for the Accused persons to be convicted in respect of the charge proffered against him, and so the Accused person should be acquitted and discharged.

### **THE LAW ON SUBMISSION OF NO CASE TO ANSWER**

The Criminal Procedure Act, 1960 (Act 30) makes provision for Submission of No Case to Answer. Sections 173 and 174(1) of the Criminal offences Act 30 provides:

*“173 Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.*

*174(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.”*

Section 5(2)(a) of the Practice Directions (Disclosures and Case Management in Criminal Proceedings) dated 30<sup>th</sup> October, 2018 reads:

*“At the close of the case for the Prosecution, the Court shall, on its own motion or on a Submission of No Case to Answer, give a reasoned decision as to whether the Prosecution has, or has not, led sufficient evidence against the Accused person as to require the Accused person to open his defence.”*

In the case of Michael Asamoah & Another vrs The Republic [2017] DLSC 2628 @ page 4, the Supreme Court speaking through Justice Adinyira JSC stated the law on submission of no case as follows:

*“The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial on indictment may be restated as follows:*

*There had been no evidence to prove an essential element in the crime;*

- a. *The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*
- b. *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- c. *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt and one with innocence. See also the cases of Tsatsu Tsikata vrs The Republic [2003-2004] SCGLR 1068; Affail vrs The Republic [1975] 2 GLR 69; Apaloo and Others vrs The Republic [1975] 1 GLR 156-192; State v. Ali Kassena [1962] 1 G.L.R. 144, S.C.”*

In the case of Bruce-Konuah vrs The Republic [1967] GLR 611-617, Amisah J.A. stated and I quote:

*“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”*

## **THE LAW AND EVALUATION OF EVIDENCE**

Section 131(1) of Act 29 provides:

*“A person who defrauds any other person by a false pretence commits a second degree felony.”*

Section 132 of Act 29 provides:

*“A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.”*

From the above, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation;
2. To obtain the consent of another person;
3. So that the person parts with or transfers the ownership of something.

In the case of Republic vrs Selormey [2001-2002] 2 GLR 424, the court stated the following ingredients in an offence of defrauding by false pretences:

*“A person shall make a false representation or by a personation either by written, spoken or sign language or any other means whatsoever; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was false or made without the belief that it was true; as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.”* See also Sarpong vrs The Republic [1981] GLR 790, Adobor vrs The Republic [2008] 19 MLRG 23 CA.

Section 133 of Act 29, in defining false pretence, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

This Court is not expected to do anything beyond a determination of whether or not a prima facie case has been made against the Accused person. In doing so, one has to consider whether or not the evidence so far adduced has been so discredited as a result of cross-examination that it would be unreasonable to continue with the trial, or whether an essential ingredient or element of the charges against the accused person has not been established by the evidence so far adduced. In the case of Atsu vrs The Republic [1968] GLR 716 @719 CA, the Court stated:

“As a general rule, evidence from the defence is not taken until the court has held that the prosecution has established a prima facie case. This is based upon the well-known principle that it is the prosecution which has an onus to prove the guilt of the person they accuse of an offence, and not the accused who should establish his innocence, the accused should therefore not show his hands until the need arises.”

On this same issue of establishing prima facie case, I will quote the venerable Justice (Rtd) S.A. Brobbey in his Book titled “The Essentials of the Ghana Law of Evidence” at page 55:

“The law is well-settled that at the end of the case for the prosecution, only prima facie case can be made against the accused. This principle was well articulated in the case of The State v. Sowah and Essel ([1961] GLR 743) where it was held at page 745 that:

“It is wrong therefore to presume the guilt of an accused merely from the facts proved by the prosecution. The case for the prosecution provides prima facie evidence from which the guilt of the accused may be presumed, and which therefore calls for an explanation by the accused.”

The defence counsel in his written submission was that the intent to defraud is non existence and the role the Accused person played was to facilitate the travelling of PW1. That, the Accused person did not promise to get PW2 Visa in order to travel. The defence counsel further submitted that the representation rather came from Asare Baffour and clearly not from the Accused person as can be gleaned from the cross examination of PW2. At paragraph 2 of his written submission, the defence counsel submitted as follows:

“It must be emphasized that by the introduction of the Accused person by a third party, a civil transaction was entered into by the witnesses and the Accused person.

A default in providing travelling documents render it as a breach and the best judicial remedy available to PW1, PW2, PW3 and PW4 were to commence civil proceedings against the Accused person.”

With all due deference to the defence counsel, I disagree with this submission, and there is overwhelming evidence that the Accused person accepted to secure Visas for the complainants to travel to Germany. At this stage of the trial, it will not lie in the mouth of the defence counsel to say that the transaction was a civil matter. It is true that a third party introduced the Accused person to the complainants as one who could help secure them Visas.

The defence counsel at page 18 of his written submission cited the case of Akowuah vrs Commissioner of Police [1964] GLR 475 where the Supreme Court held that false pretence created by section 131 of Act 29, it must be a pretence made with intent to defraud or for the purposes of defrauding. In the Akowuah case (supra), the main question in the appeal was: Are the words “with intent to defraud,” or “defrauded” which are patently omitted particulars necessary to give reasonable information as to the nature of the charge, or are they matters which are of the essence of the offence of fraud by false pretences?

In the instant case before this Court, all the three counts or charges of Defrauding by False Pretences against the Accused person contain the expression:

“..... with **intent to defraud**, did obtain the consent of one .....

.....” (Emphasis mine).  
The defence counsel’s submission that the Akowuah case (supra) falls on fours with the instant case is misconceived.

I have carefully examined the evidence of the five (5) Prosecution Witnesses and the answers elicited by the defence under cross examination of the Prosecution Witnesses. From the entirety of the evidence adduced at this stage of the trial, the Court finds that the evidence so far adduced has not been discredited as a result of cross-examination. At this stage of the trial, the prosecution has been able to establish the essential ingredients or elements of the charges against the accused person.

As pointed out by the Supreme Court of Ghana in the case of case of Tsatsu Tsikata vrs The Republic (supra), the decision as to whether or not the prosecution has proved its case beyond reasonable doubt should be made at the end of the entire trial.

The Accused person has some questions to answer and it is therefore apposite to call upon him to put forward his defence to the Court. In the circumstances, I hold that the prosecution has been able to establish a prima facie case against the Accused person. The submission of no case to answer filed by the defence is overruled. Consequently, I call upon the Accused person to enter into his defence.

**ISAAC ADDO**  
**CIRCUIT COURT JUDGE**  
**11<sup>TH</sup> JUNE, 2024**



